

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: January 9, 2009

Signature:

(William A. Di Bianca)



Docket No.: SPINE 3.0-437 CIPCIPCIPCIPCIPCON III  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Errico et al.

Application No.: 10/784,598

Group Art Unit: 3738

Filed: October 12, 2004

Examiner: B. E.  
Pellegrino

For: INSTRUMENTATION FOR  
REPOSITIONING AND EXTRACTING AN  
ARTIFICIAL INTERVERTEBRAL  
DISCFROM AN INTERVERTEBRAL SPACE

**COMMUNICATION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Madam:

This communication is in response to the Office Action mailed December 10, 2008. In the Action, the Examiner asserted that Applicants have not complied with one or more conditions for receiving the benefit of an earlier filing date because no petition was filed with Applicants' late claim for priority. In response, Applicants submit herewith a petition to correct priority, along with a signed application data sheet, each indicating the correct priority information. Applicants respectfully submit that these documents correct Applicants' claim to priority.

Further in the Action, the Examiner required restriction to one of the following species under 35 U.S.C. §121:

Species A: Figs. 5a-c.

Species B: Figs. 5d-f.

Species C: Figs. 5g-i.

Species D: Figs. 5j-l.

Species E: Figs. 5m-o.

In response, Applicants hereby elect Species D. Claims 1-5, 7, 8 and 11-15 encompass the elected species and independent claim 1 and claims 2-5, 7 and 8 are generic and read on each of Species A-E.

In the event any fee is due in connection with the present response, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 9, 2009

Respectfully submitted,

By 

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